the Armed Services of the Crown. This function is not commercial and is connected with the defence of Singapore, which is a responsibility of the Government of the United Kingdom, that is, the Crown in right of the United Kingdom. The inference that a corporation acts on behalf of the Crown is more readily drawn when its functions are not commercial but are connected with matters such as the defence of the realm, which are essentially the province of government: 9 *Halsbury's Laws of England,* 3rd edition, p.10. The members of the Board are appointed and may be removed at any time by one or other of Her Majesty's Principal Secretaries of States: section 3 of the Ordinance. The evidence is that all the members are attached to the Armed Services of the Crown. The question whether a corporation is a servant or agent of the Crown depends on the degree of control which the Crown, through its Ministers, can exercise over it in the performance of its duties: 9 *Halsbury's Laws of England,* 3rd edition, p.10. In my opinion, the Services' Lands Board is completely under the control of the Crown in right of the United Kingdom. For the above reasons, I have no difficulty in coming to the conclusion that the Board is an agent of the Crown in right of the United Kingdom.

But, in my judgment, the fact that the Board holds the leased land for the purposes of the Crown in right of the United Kingdom does not make the land Crown land within the meaning of the Crown Lands Encroachments Ordinance. I take the view that "Crown land" in that Ordinance means unalienated Crown land. Once a piece of land is alienated by the Crown it ceases to be Crown land for the purposes of the Ordinance, and the new owner has the ordinary remedies against any person who occupies the land unlawfully. In my opinion, when the land was leased by the Crown to the Board the land ceased to be Crown land; and thereafter it was not open to the War Department Land Agent to make use of section 2 of the Ordinance to remove a person alleged to be in unlawful occupation of a portion of the leased land.

There was a dispute as to whether the Crown or the complainant should be the respondent in this appeal. The proceedings in the Magistrate's Court were between the complainant and the occupant. In my opinion, as the appeal has been brought by the occupant the proper respondent is the complainant.

As the complainant should not, in my opinion, have proceeded under section 2 of the Crown Lands Encroachments Ordinance, I order him to pay the appellant's costs of this appeal to be taxed by the Registrar.

Appeal allowed.

Solicitors:—*Rodyk & Davidson; Drew & Napier.*

HARJIT SINGH v. REGINA

[A.Cr.J. (Winslow J.) June 26, 1963]

[Singapore — Magistrate's Appeal No. 39 of 1963]

Criminal Evidence—Voluntarily causing grievous hurt with heavy stick—Depressed fracture of skull—Evidence of fracture—X-ray photograph not produced—Oral evidence by medical officer—Whether secondary evidence admissible.

This was an appeal from a conviction upon a charge of causing grievous hurt by means of a heavy stick which caused a depressed fracture of the skull. At the trial no X-ray photograph of the fracture was given in evidence but oral evidence was given by a medical officer. No objection was taken at the trial to the non-production of the X-ray photograph.

Held: (1) the medical officer who gave oral evidence gave evidence of the contents of a document which was not produced in court in circumstances where no satisfactory evidence had been laid for the admission of secondary evidence of the original. In these circumstances the fracture could not be proved without admission of hearsay evidence;

(2) the evidence of the medical officer apart from that on the fracture did not substantiate grievous hurt;

(3) failure to produce the X-ray photograph could not be excused on the ground that no objection to its non-production was made at the trial.

MAGISTRATE'S CRIMINAL APPEAL.

S. H. D. Elias for the appellant.

Donald Yeo (Deputy Public Prosecutor) for the respondent.

Winslow J.: In this appeal against his conviction and sentence of six months' imprisonment upon a charge of voluntarily causing grievous hurt to the complainant by means of a heavy stick which caused a depressed fracture of the skull, counsel for the appellant submits, as his first ground of appeal, that there was no evidence of such a fracture since the only evidence thereof was contained in an X-ray photograph which was not produced in Court.

In my opinion, the point is well taken because the medical officer who was called to give evidence gave oral evidence of the contents of a document which was not produced in Court in circumstances where no satisfactory foundation had been laid for the admission of secondary evidence of the original. It therefore follows that the medical officer was not, without the aid of the hearsay evidence in question, in a position to say that what she herself found on examination of the patient was a fracture of the skull. By the application of some common sense to the case as a whole, it would no doubt be possible to say that there were materials before him on

which the learned District Judge could have found "grievous bodily harm" in the sense in which that expression is understood in England but there is, however, no entire coincidence between "grievous bodily harm" in England and "grievous hurt" as defined in our Penal Code. Further, there was no evidence at all from the lady doctor or elsewhere to substantiate grievous hurt in this sense. In passing I might add that although there was some reference by witnesses to an "operation" nobody was called from the surgical unit to give evidence about it.

I have also considered whether this failure to produce the X-ray photograph can be excused on the ground that no objection was taken in the Court below to its non-production but it is clear that inadmissible evidence cannot be rendered admissible, contrary to the rules of evidence, merely because no objection is taken. It is the duty of the prosecution to prove its case strictly and it is well-known that even admissions of facts like these will not suffice in a criminal trial. There was, of course, no such admission.

The only other ground of appeal to which I think I ought to refer is the ground which complains that the learned District Judge did not consider the defence of provocation. Having regard to the finding of fact on the case as a whole, with which I see no reason to disagree, that the appellant was the aggressor, it is difficult to see how the defence of provocation could have succeeded. The learned District Judge considered the appellant's story and rejected it entirely. Having rejected the story that the complainant attacked him first there was little or nothing left on which a defence of provocation could possibly have been based. In any case provocation does not excuse the offence entirely. It is a mitigating factor and a special punishment is provided where the facts prove grave and sudden provocation.

In all the circumstances I am of the opinion that there was sufficient evidence to justify a conviction for the lesser offence of voluntarily causing simple hurt under section 323 of the Penal Code. The facts, but for the technical objection sustained, show a serious assault albeit not the offence as charged.

I would therefore substitute a conviction accordingly and alter the sentence to a fine of $500 or 3 months' imprisonment in default.

Order accordingly.

Solicitors:—*Elias Bros.*

ABU BAKAR v. REGINA

[A.Cr.J. (Winslow J.) June 27, 1963]

[Singapore — Magistrate's Appeal No. 176 of 1962]

Criminal Law—Bribery and corruption—Prevention of Corruption Ordinance, 1960, s.6—Admission by defence of receipt of money but only as a commission in a sale—"Corroboration" of defence story.

Criminal Evidence—Failure by defence to produce material witness—Whether unfavourable inference to be drawn—Evidence Ordinance, s.115.

The appellant, a police officer was convicted for corruptly obtaining $20 as a reward for forbearing to take action against one Tan Geok Leng who had been riding a motor-scooter without "L" plates whilst holding a provisional licence. The appellant admitted receiving the $20 but said it was commission for having found a buyer for the motor-scooter alleged by him to belong to one Tan Hong Seng.

The learned District Judge indicated that he disbelieved the defence story but went on to make the following finding in his reasons for disbelieving the defence story. "There was no evidence at all that the appellant ever went to the office during those six months to look for the complainant in order to collect his commission." The appellant had in fact given such evidence. Secondly, the learned District Judge observed that Tan Hong Seng had not been called as a witness for the defence and said "If the defence story was true then Tan Hong Seng could have corroborated it in material particulars."

Held: (1) there is no duty cast upon the defence in a criminal trial to call any evidence and no inference unfavourable to him can be drawn if he chooses not to offer evidence. The learned District Judge appeared to have drawn an unfavourable inference because Tan Hong Seng was not called as a defence witness;

(2) there was a misdirection on the part of the learned District Judge in requiring corroboration of the defence story, and therefore the appeal must be allowed.

Case referred to:—

(1) *Goh Ah Yew* v. *Public Prosecutor* [1949] M.L.J. 150, at p.153.

MAGISTRATE'S CRIMINAL APPEAL.

L. Rayner for the appellant.

Donald Yeo (Deputy Public Prosecutor) for the Crown.

Cur. Adv. Vult.

Winslow J.: Counsel for the appellant, Mr. Leslie Rayner, preferred 8 grounds of appeal against the conviction and sentence of six months imprisonment of the appellant on a charge of corruption under section 6(a) of the Prevention of Corruption Ordinance, 1960 (No. 39 of 1960). The appellant was a police officer attached to the Mobile Squad of the Traffic Police and the allegation against him was that he had corruptly obtained $20 as a reward for forbearing to take action against one Tan Geok Leng who had been riding a motor-scooter without "L" plates whilst holding a provisional licence.

There is little doubt that the appellant